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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|--------------------------------------|
| 09/589,514 | 06/08/2000 | Allan Herrod | 4842.0068-01 | 1287 |
| 7590 | 05/19/2005 | | | EXAMINER FRANKLIN, JAMARA ALZAIDA |
| ALAN ISRAEL, ESQ Kirschstein, Ottinger, Israel & Schiffmiller, P.C. 489 Fifth Avenue New York, NY 10017-6105 | | | ART UNIT 2876 | PAPER NUMBER |

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/589,514 | HERROD ET AL. | |
| | Examiner | Art Unit | |
| | Jamara A. Franklin | 2876 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 March 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 76-79 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 76-79 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Acknowledgment is made of the response filed on 3/28/05. Claims 76-79 are currently pending.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 76 is rejected under 35 U.S.C. 102(b) as being anticipated by Sainton et al. (US 5,854,985) (hereinafter referred to as ‘Sainton’).

Sainton teaches a method of reducing a cost of transmitting data from a mobile data collection terminal to a remote host over a communication network having a plurality of channels including a wireless channel, comprising the steps of:

determining a location of the terminal relative to the host (col. 16, lines 28-30);

determining the cost of transmitting the data from the location of the terminal over each channel to the host (col. 16, lines 61-64 and col. 17, lines 1-20);

selecting the channel for data transmission based on the location of the terminal and the cost determined to be least (col. 16, lines 32-34); and

transmitting the data from the terminal to the host over the channel selected with the least cost.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 77 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sainton in view of Pieterse (US 6,088,127).

The teachings of Sainton have been discussed above.

Sainton lacks the teaching of the step of determining a priority for the data.

Pieterse teaches the step of determining a priority of data wherein the selecting step is also based on the priority data (col. 8, lines 35-48).

One of ordinary skill in the art would have readily recognized that transmitting data in view of priority of the data would have been beneficial to the invention of Sainton for the purpose of arranging data so that time and energy may be conserved in trying to transmit less important data. Therefore, it would have been obvious, at the time the invention was made, to modify the teachings of Sainton with the aforementioned step as taught by Pieterse.

5. Claims 78 and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sainton in view of Wang et al. (US 5,490,217) (hereinafter referred to as 'Wang').

The teachings of Sainton have been discussed above.

Sainton lacks the teaching of recording an image using an image capture device, and wherein the transmitting step includes transmitting the image.

Wang teaches transmitting a bar code (col. 4, lines 3-12).

One of ordinary skill in the art would have readily recognized that an image, particularly a bar code image, is one of a plethora of data which may be transmitted to a remote location for the purpose of conveying information to another source. Therefore, it would have been obvious, at the time the invention was made, to modify the teachings of Sainton with the transmission of an image as taught by Wang convey information.

Response to Arguments

6. Applicant's arguments, filed 3/28/05, with respect to the rejection(s) of claim(s) 76-79 under 35 U.S.C. 102(b) and 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Sainton et al. (US 5,854,985) which meets the priority date of the instant application.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamara A. Franklin whose telephone number is (571) 272-2389. The examiner can normally be reached on Monday through Friday 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jamara A. Franklin
Examiner
Art Unit 2876

JAF
May 10, 2005


DIANE I. LEE
PRIMARY EXAMINER